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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,520	12/13/2001	Parker Small	UF156IB-D1	7426
29847	7590	10/15/2003	EXAMINER	
VAN DYKE & ASSOCIATES, P.A. 7200 LAKE ELLENOR DRIVE, SUITE 252 ORLANDO, FL 32809			GITOMER, RALPH J	
			ART UNIT	PAPER NUMBER
			1651	7

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
10/015,520

Applicant(s)  
Kudla et al.

Examiner  
Ralph Gitomer

Art Unit  
1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 13, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-20 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-11 and 14-20 is/are allowed.
- 6) ☒ Claim(s) 12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6 6) ☐ Other:

The amendment received 12/13/2001 and the IDS received 3/19/2003 have been entered and claims 9-20 are currently pending in this application.

5           Please inform the examiner where in the chain of CIP applications enablement is first found in the specification for the presently claimed invention as all the applications are not currently available to the examiner. Priority is granted to 6/19/2000 at this time.

10           A reading of the specification raises a few questions. Is the claimed device sufficiently specific for eosinophils where a high concentration of neutrophils (or lymphocytes) in the presence of infection would not then indicate the presence of eosinophils? What would the effect of a chronic fungal sinusitis  
15           have upon the device? No enablement is seen for the claimed device in distinguishing for tears in the case of ocular inflammation of unknown origin or feces in the case of colonic symptoms of unknown origin.

20           Claims 12 and 13 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

25

Claim 12 is difficult to understand where claim 10 from which it depends has no reagents. In claim 13 ~~the~~ said reagent test strip~~s~~ lacks antecedent basis.

5           The title of the invention is not aptly descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

10           The Abstract of the Disclosure is objected to because it is not directed to the currently claimed invention. Correction is required. See M.P.E.P. § 608.01(b).

The following prior art pertinent to applicant's disclosure is made of record and not relied upon:

15           Small (6,551,791) is a parent patent.

Roe (6,342,037) teaches sensors.

Schnabel (4,755,462) teaches esterase detection.

Small (5,910,421) with a different inventive entity is a related patent.

20           Schlipfenbacher (5,338,513) teaches a test strip.

Romisch (5,869,231) teaches determining lacrimal fluid.

Serial No. 10/015,520  
Art Unit 1651

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm.

5 The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (703) 308-4743. The fax phone number for this Art Unit is (703) 872-9306. Any inquiry of a general nature or relating to the status

10 of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235. For 24 hour access to patent application information 7 days per week, or for filing applications electronically, please visit our website at [www.uspto.gov](http://www.uspto.gov) and click on the button Patent Electronic Business

15 Center for more information.

*Ralph Gitomer*  
Ralph Gitomer  
Primary Examiner  
Group 1651

RALPH GITOMER  
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